

# **PUBLIC TRUST ALLIANCE**

**A Project of the Resource Renewal Institute**

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## **Comments Regarding 2005 Public Review Draft of the California Water Plan**

Dear California Department of Water Resources;

I am pleased to have had the opportunity to participate for the last four years in the public process supporting the preparation of this update of the California Water Plan. This iteration, although delayed and interrupted by changes in government administration, has restored a modicum of legitimacy and credibility to a planning exercise that had been growing increasingly irrelevant and of little use to the California public in grappling with its water future. We now have a framework for discussion and action that has gained support and recognition from key water constituencies. But we have to remember that it is very much just a start. In the end, it will be the humility and integrity that we bring to the project that will determine enduring results.

Several developments in the current plan are important in making this version useful for moving forward: 1.) The use of Scenario analysis - the notion that the future can take various forms depending on what happens in nature and how our social and economic institutions shape or don't shape actions of individuals and economic actors on the ground, 2.) The potential application of a suite of strategies, as determined appropriate at regional and local levels to deal with questions of water supply and demand, 3.) An attempt at explicitly recognizing, and defining, institutional roles of Federal, State, Local, corporate and private actors in the implementation of water policy, 4.) The best presentation yet of quantitative data and disclosure of gaps in knowledge which may affect planning decisions, and 5.) Explicit attention to environmental justice issues, questions of the health of Indigenous Peoples, and the notion that hydrological conditions might significantly change, even within the planning horizon, due to large scale climate change.

Since no constituency "won" the futures considered in the plan, we are all still able to participate in the process. But that much said, several traditional mythologies that distorted past water planning exercises continue to cast a shadow over this one. The plan's summary of institutional history still has some selective cloudy spots. Perhaps public understanding of public and private spheres of conduct, and the institutional tools available for resolving controversies on their boundaries, are the greatest casualties of the rush to apply familiar models to explore potential strategies for better matching supply and demand. This is an important point because even the basic labels of "supply and demand" tend to trick us into thinking that economists, more than professionals of other

disciplines are best prepared to deal with the questions. Economists may take us further from the truth as the mechanics of economic power are reflected in academic, political and business contexts. Without an acknowledgment of the possibility of future corruption, or its past role in the history of our water infrastructure, important experiences of the people of the state are easily left out of formulas for future action.

Even though the role of court decisions was described in the Plan as important in determining how various actors use water in the state, actual implications of recent court decisions were presented in a manner impenetrable to non-lawyers and without clearly disclosing what is at stake for the people of the state. While public trust responsibilities are described for several public entities, the plan fails to articulate that the major decisions reached by the California Supreme Court and Federal Courts in 1884 (declaring water use in hydraulic mining and its impacts on navigability of state rivers a nuisance) were in fact “public trust” decisions. The plan’s writers seem determined to present the public trust doctrine as an “environmental” consideration first impacting California Water Rights in the aftermath of the National Audubon case in 1983. The denial of far earlier application makes it difficult to appreciate the potential of this framework in helping the public negotiate current controversies while still protecting historic public interests. With a water system governed largely by public default, the idea that trustees have affirmative obligations to the public is an absolutely essential component of future planning.

Public interests are clearly at stake in our major public water systems built for the people of the state. Changing patterns of capacity to finance quality water delivery to all sectors of the public should probably be a larger concern for the California Water Plan. Some of the greatest public health victories in our nation’s history came with the creation and operation of public drinking water systems with enforceable water quality standards. The incidence of waterborne diseases decreased precipitously, particularly in communities segregated by race and income. But because of the linkages and paths interconnecting rich and poor alike, the general level of public health was vastly improved as well with public water systems. These interconnections exist today and the discussion of the mix of public and private responsibilities and the respective property interests which provide the incentive structure for various players simply cannot be ignored by responsible planners.

Today we are at risk of losing historic public health gains if an indiscriminate strategy of privatization is pursued. It will simply “make more sense” for profit-motivated service providers to focus effort on households with the greatest ability to pay. On the international scale, the initial hope of increased investment with privatized systems has simply failed to materialize in many countries. The linkage of cholera epidemics in South Africa to the installation of pre-paid water meters at the instigation of Suez, Inc. is legendary. Substantial deterioration in quality of services accompanied by unsustainable rate increases have also been observed in municipal systems which have been privatized in several cities in the U.S.. With serious Federal legislative attention focused on restricting the ability of the U.S. Geological Survey to “compete” with private scientific consultants, and US. Department of Agriculture “Watershed Education” services sponsored by the International Association of Water Bottlers, the credibility of

knowledge available to the public to make decisions is becoming increasingly suspect. This is not to say that private enterprise shouldn't have a substantial role in water distribution; market discipline does indeed contribute to exactly the type of efficiencies so badly needed in our water systems. But we don't have to completely surrender property interests in either the water or the facilities to motivate these efficiencies. Yet that is now the demand in actual contracts for water bottling at the headwaters of the biggest navigable rivers in California (see McCloud / Nestle contract).

Ever optimistic, this version of the California Water Plan fails to give much attention to the historical role of greed in shaping the California water system, or to the probability that corruption might again shape the public decision making processes relied upon to make choices that will shape our future. The renewal of water project contracts is treated so much as a given that it is never described as a discretionary action. In talking about assuring continued public access to high quality drinking water from public systems, the possible impacts of an exponentially growing private water bottling industry are not mentioned in the plan. If the premium that people will pay for the assurance of safe drinking water is privatized on a large scale and appropriated as pure "profit" by the bottlers and diverted from the revenues that support generalized water infrastructure, the public will lose the capacity to serve its poorest citizens with high quality water.

It was heartening that this iteration of the State Water Plan gave attention to the disproportionate impacts of water policies on low income groups and communities of color. The proposed solution was to do a better job of welcoming such groups into public planning processes, but California's future requires more. Perhaps that is why the general concern is called "Environmental Justice." It requires an actual substantive commitment. The health of these communities and Indigenous Peoples is an important indicator of the systemic performance of our water infrastructure. The prominent placement of this condition among the explicit recommendations of the plan is important, but it is still hard to see what it means.

The viability of racial, cultural and economic diversity is important to California's water future and indeed to the more general survival of our systems of democratic governance. In water, we have a lot yet to learn from traditional resource management strategies of Indigenous Peoples. Perhaps this is because they may not have allowed themselves to fall victim to self-deceptive notions that they were in complete control, or even that they were "managing" the world in which they live. Centuries of experience with the use of fire ensured that they didn't work themselves into the position that industrialized "majority" culture has with respect to its science of fire suppression. In order to assure ourselves that we are not still living in a world where official government policy is not cultural extermination, we have to summon more humility and look seriously at the trade-offs that are suggested by alternative water policies. It will require diligent attention to ensure that these experiences have continuing access to decision-making no matter what we label the current academic approach after "adaptive management" has run its course.

Perhaps the notions of humility and integrity are most needed in approaching issues of uncertainty in how to measure and regulate groundwater use and what to do in the face of very probable impacts of ongoing climate change. The strategy of the California Water Plan in reducing a great deal of this complexity to subtracting two million acre feet of water supply from the results of every “scenario” to account for “overdraft.” is just too misleading to be acceptable. The dangers of generalizing across conceptual boundaries and the use of averages in comparisons between apples and oranges are familiar challenges in the quantification of scientific observations but they are terribly difficult for the lay public to comprehend.

Rising sea levels, sinking deltas and religious fundamentalism regarding “pre-1914 rights” may all be too complex for any planning agency to handle, but as a point of departure, some of the suggestions offered in the comments by the Pacific Institute could be very helpful in flagging some key conceptual leaps that are part of this water plan, and the suggestion of actually including a scenario which incorporates realistic commitments to conservation could be valuable. Without this specific effort, a lot of people might think it’s already been included in this plan.

In conclusion, we appreciate the enormous strides that have been made in this plan to make it a useful basis for investment and action to maintain and enhance our abilities to meet public water needs for the next thirty years. But more attention to critical issues will be required if DWR won’t be placed in the position of surrendering public capacity to manage inherently public resources, and so that it can strategically avoid situations where it writes checks to private parties in satisfaction of fraudulent claims on an intergenerational scale as it did during the “Energy Crisis” of several years ago. Thank you for consideration of these comments.

Sincerely,

Michael Warburton  
Executive Director